

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

MIGUEL ANGEL ALMARAZ,

Plaintiff,

v.

Case No. 2:21-cv-551-JLB-NPM

HOMETOWN VENTURES LLC, D/B/A
MAXX FOODS 2, SOHIL JIVANI, and
MANISHA JIVANI

Defendant.

ORDER

Before the Court is a Motion for Entry of Clerk's Default (Doc. 11). Plaintiff Miguel Angel Almaraz requests the Court direct the Clerk to enter a default against Manisha Jivani. No response was filed to the motion and the response time has lapsed. For the reasons discussed below, the Court grants the motion.¹

“When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.” Fed. R. Civ. P. 55(a). Before directing the clerk to enter a default, however, the Court must determine whether

¹ Plaintiff's counsel should note that under local rule 3.01(f) no party may submit a proposed judgment or other order without leave.

Plaintiff properly effected service of process, for which Plaintiff bears the burden of proof. Fed. R. Civ. P. 4(l); *Chambers v. Halsted Fin. Servs., LLC*, No. 2:13-cv-809-FTM-38, 2014 WL 3721209, *1 (M.D. Fla. July 28, 2014); *Zamperla, Inc. v. S.B.F. S.R.L.*, No. 6:13-cv-1811-Orl-37, 2014 WL 1400641, *1 (M.D. Fla. Apr. 10, 2014).

Federal Rule of Civil Procedure 4(e)(2)(B) allows the service of an individual within a judicial district of the United States by transmitting a summons and a complaint at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides therein. Further, Florida Statute Section 48.031 permits substitute service by leaving copies of the service documents at the person's usual place of abode with any person residing therein who is 15 years of age or older and informing the person of the contents of the documents. Here, on August 20, 2021, the process server served Manisha Jivani at her residence by substitute service on Rosa Zapa, a person of suitable age and discretion who resides there (Doc. 10).

The Court finds Plaintiff properly effected service of process on Defendant Jivani, who failed to timely respond to the Complaint (Doc. 1). Therefore, the Court finds a clerk's default must be entered pursuant to Rule 55(a). Accordingly, the Motion for Entry of Clerk's Default (Doc. 11) is **GRANTED**, and the Clerk is directed to enter a default against Defendant Manisha Jivani.

Within thirty-five (35) days after entry of a clerk's default, Plaintiff must

apply for the default judgment or file a paper identifying each unresolved issue necessary to entry of the default judgment. M.D. Fla. R. 1.10(c).

ORDERED in Fort Myers, Florida on September 15, 2021.



NICHOLAS P. MIZELL
UNITED STATES MAGISTRATE JUDGE